UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,061	03/25/2004	Pierre L. Laurent	FFRT-P003	7853

32986   7590   02/25/2009
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EXAMINER
BAIRD, EDWARD J

ART UNIT	PAPER NUMBER
3695	

MAIL DATE	DELIVERY MODE
02/25/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 January 2009*.
2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.
  4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-21* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  a)☐ All   b)☐ Some * c)☐ None of:
    1.☐ Certified copies of the priority documents have been received.
    2.☐ Certified copies of the priority documents have been received in Application No. _____.
    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09

January 2009 has been entered.

Status of Claims

2.   Applicant has amended claims 1 and 16. no claims have been added or

withdrawn. Thus, claims 1 – 21 remain pending and are presented for

examination.

Response to Arguments

3.   Applicant's remarks/ arguments filed 09 January 2009 with respect to the 35 USC

§ 103 rejections of claim 1 - 21 have been fully considered but are moot in view of the

new ground(s) of rejection.

Claim Rejections - 35 USC § 101

4.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition
> of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

5.   Claims 1 – 21 are rejected because they are directed to non-statutory subject

matter.

6.   **Claims 1 – 21,** method claims, are rejected under 35 U.S.C. §101 because, in

order to comply with §101 a process/ method must (1) be tied to a particular machine or

apparatus, or (2) transform underlying subject matter (such as an article or materials) to a different state or thing.

The methods recited in the claims fail to (1) be tied to a particular machine or apparatus, or (2) transform underlying subject matter to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972).

There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such a data gathering or outputting, is not sufficient to pass the test.

There is no recitation within the claims to indicate that the steps that comprise the method are nothing but mental steps performed within the mind of a person. Examiner suggests that Applicant amend the independent claims to include terminology such as "by the computer" in the limitations for bundling capacity releases and also for each limitation for receiving and obtaining data, capacity releases, derivative purchase requests, derivative contracts and the like.

Examiner advises Applicant that no new matter should be included in the claim language.

Claim Rejections - 35 USC § 112

7.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8.   Claims 1 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

9.   **Claims 1 and 16** recite the limitations of bundling capacity releases in

accordance with a geographic bundling criterion, thereby creating a plurality of available

derivative contracts. It is unclear to the Examiner how derivative contracts are created

by bundling capacity releases.

          For the purpose of examination, the claims will be examined to the best of the

Examiner's ability given the lack of clarity.

Claim Rejections - 35 USC § 103

10.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as
> set forth in section 102 of this title, if the differences between the subject matter sought to be
> patented and the prior art are such that the subject matter as a whole would have been obvious at
> the time the invention was made to a person having ordinary skill in the art to which said subject
> matter pertains. Patentability shall not be negatived by the manner in which the invention was
> made.

11.   Claims 1 – 10, 14 – 17, 20 and 21 are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Nadan et al** (US Pub. No. 2005/0021346) in view of **Blalock et al**

(US Pub. No. 2001/0047284) in further view of **Bjerre et al** (US Pub. No.

2002/0123911).

12.   Regarding claim 1, **Nadan** teaches:

* receiving capacity release data from a plurality of carriers, said capacity

release data pertaining at least to said two modes of transportation [see at least 0017,

0063, 0076 and 0077] – Examiner notes that **Nadan** discloses one or more modes of

transportation [0076 and 0077];

* bundling capacity releases in accordance with a geographic bundling

criterion, thereby creating a plurality, of available derivative contracts [see at least 0018,

0022, 0063, and 0073] – **Nadan** disclose the concept of Lanes where a lane is defined

by a zone of origination and zone of destination [0087]. He further discloses an example

of a transportation instrument which represents the aggregate supply and demand of all

transportation in dry vans from the LA zone to the Chicago zone (geographic criterion)

on April 11th [0094 and 0095].

* receiving a derivative purchase request from said first user for capacity

between said first location and said second location, said derivative purchase request

having contract requirements that specify at least a shipment volume and a performance

time [as discussed above, and 0019] – **Nadan** further discloses performance time [see at least 0102] and shipment volume requirements [see at least 0105].

- obtaining from said plurality of derivative contracts a group of derivative contracts that satisfy, said contract requirements [see at least 0019];

- selecting a subset of said group of derivative contracts to satisfy, said derivative purchase request, said subset including at least a first derivative contract for a first mode of said two transportation modes and a second derivative contract for a second mode of said two transportation modes [see at least 0019];

- selecting a subset of said group of derivative contracts to satisfy, said derivative purchase request, said subset including at least a first derivative contract for a first mode of said two transportation modes and a second derivative contract for a second mode of said two transportation modes [see at least 0018 and 0019].

Examiner notes that *sorting the shipping bids into a set of first futures, sorting and aggregating the carrier offers into a set of second futures, selecting matching sets of the first and second futures* as indicative of Applicant's **selecting a subset of said group of derivative contracts**. Again, **Nadan** discloses *"Transportation Instruments"* [0073] to aggregate shipping demand and carrier capacity. To create such instruments, individual shipments and trucks are separated out, sorted and aggregated without including the specific details which are necessary for delivery. Here again is an indication of Applicant's **selecting a subset of said group of derivative contracts**. **Nadan** further discloses selecting transportation instruments in a watchlist [0166 and 0167], selecting open orders [0168 and 0169], and selecting a shipment in the tracking and tracing link [0170 and 0171].

- displaying said group of derivative contracts in a first data section of a computer window on a computer display screen for viewing [see at least Figure 15, 0038, 0217].

Nadan does not explicitly disclose:

- simultaneously displaying user-specific forecast data in a second data section of said computer window, said user-specific forecast data pertaining to demand forecasts by shippers between said first location and said second location, said user-specific forecast data does not include forecasts associated with any shipper that has not expressed a prior implicit or explicit authorization for said first user to view their forecast data.

However, **Blalock** discloses a method and system for the negotiation of transportation contracts between shippers and carriers which is implemented via a computer network [0012]. **Blalock** discloses an embodiment displaying RFQ data for two lanes [0109 to 0110 and FIG. 7] as well as displaying shipper's forecast [0110]. Examiner interprets RFQ (request for quotation) data as analogous to Applicant's derivative contracts in that such data represents transportation contracts.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the instant invention to modify **Nadan's** disclosure to include *displaying shipper's forecast* as taught by **Blalock** because carriers can optimize assets and better forecast demand [**Blalocket** 0078].

Neither Nadan nor **Blalock** explicitly discloses:

- transportation via two modes transportation from two of air, sea rail, and truck;

However, **Bjerre** discloses a method and system that enables domestic and international transportation users to handle shipping transactions through a single common system and tracking cargo movements with multiple carriers [0009]. **Bjerre**

discloses the common carrier system using a routing list as specified by the user for

permitting the ordering of the hierarchy in which carriers are polled for booking

availability [0039]. **Bjerre** applies his system to carriers who are entities that transports

goods from an origin to a destination that may use trucks, trains, planes, ships, and/or

the like [0028].

Therefore, it would have been obvious to one having ordinary skill in the art at

the time of the instant invention to modify **Nadan's** disclosure to include *use trucks,*

trains, planes, and/or ships, as taught by **Bjerre** because it enable users to submit a

booking to carriers who have availability for handling a proposed booking, with or without

a routing request [**Bjerre** 0041 and 0042].

13.   Regarding **claims 2 and 3**, **Bjerre** teaches a first user is simultaneously a

shipper and a forwarder, or a forwarder and not a shipper [see at least 0042 and 0065].

14.   Regarding **claim 4**, **Bjerre** teaches a data item in said user-specific forecast data

includes only a portion of a total volume forecast from a first shipper, said total volume

forecast represents a total volume of shipping required by said first shipper between said

first location and said second location during a time frame that fall within a time frame

specified in said contract requirements [see at least 0033 and 0038 – 0040]. Examiner

notes that *the common carrier system adding or subtracting information as needed for*

each carrier as indicative of Applicant's **including only a portion of the total volume**

forecast data.

15.   Regarding **claim 5**, **Bjerre** teaches limiting in accordance to a lane restriction

criterion [see at least 0071].

16.   Regarding **claim 6**, **Bjerre** teaches limiting in accordance to a geographic

restriction criterion [see at least 0070].

17.   Regarding **claim 7**, **Bjerre** teaches limiting in accordance to a mode restriction

criterion [see at least 0075]

18.   Regarding **claims 8, 9, 14, 15, 20 and 21**, **Blalock** teaches derivative purchase

requests as representing futures purchase requests or option purchase requests.

Blalock discloses an embodiment displaying RFQ data for two lanes [0109 to 0110 and

FIG. 7] as well as displaying shipper's forecast [0110]. Examiner notes that *RFQ data*

and *shipper's forecast data* as indicative of Applicant's **futures purchase requests**.

19.   Regarding **claims 10 and 17, Bjerre** teaches the computer window implemented

via an Internet Browser [see at least 0007 and 0037]. Examiner notes that receiving and

sending data over the internet necessitates the use of an internet browser.

20.   **Claim 16** is substantially similar to claim 1, although claim 1 is more limited.

Thus, this claim is rejected for the same reasons.

21.   Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable

over **Nadan** in view of **Blalock** in further view of **Bjerre** as applied to claims 1 and 16, in

further view of **Scheer** (US Pub. No. US 2002/0138358).

22.   Regarding **claims 11 and 18**, neither **Nadan, Blalock,** nor **Bjerre** explicitly

discloses:

        • user-specific forecast data includes self-assessed qualitative ratings by said

shipper, said self-assessed qualitative ratings being performed using at least four of a

set of criteria that includes demand, manufacturing readiness, manufacturing location,

capacity, product, lane, and lane stability.

        Scheer discloses a supply chain management method involving the flow of

material, information, and money between customers, suppliers, manufacturers,

distributors and, possibly, financial institutions [0002]. He further discloses:

- a supply chain management system and method which would allow

companies to operate an entire supply chain on a "just in time" basis [paragraph 0023.

Examiner interprets *allowing companies to operate an entire supply chain* as

representative of Applicant's **self-assessed qualitative ratings** in that **"the collection**

of functions and features implemented in software and/or hardware. . . make the

operation and management of the supply chain as automated as possible".

Examiner interprets *operating a supply chain on a "just in time" basis* as representative

of Applicant's **manufacturing readiness**].

      Scheer further discloses a database of forecast data [0024], which may be

comprised of the following:

- capacity [0025]. Examiner interprets *consumption rates* as representing

Applicant's **capacity**.

- demand [0026 and 0027]

- location [see at least 0163]. Examiner notes that *excess inventory* is related

to the stocking level for a **location**.

      Therefore, it would have been obvious to a person having an ordinary skill in the

art at the time of the instant invention to modify **Nadan's** disclosure to include *supply*

chain management system and method as taught by **Scheer** because it would allow a

customer to determine if a product is in-house or needs to be from a distributor or

supplier [**Scheer** 0031].

23.   Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable

over **Nadan** in view of **Blalock** in further view of **Bjerre** as applied to claims 1 and 16, in

further view of **Scheer,** as applied to claim11, in further view of **Nafeh et al** (US Pub. No.

2002/0069155).

24.   Regarding **claim 12,** neither **Nadan, Blalock, Bjerre,** nor **Scheer** explicitly discloses:

- displaying data pertaining to said first purchased derivative contract along with linkage data between a first component segment covered by said first purchased derivative contract and a second component segment covered by a second purchased derivative contract, said first component segment and said second component segment representing component segments of a single end-to-end shipping order, and

However, **Nafeh** discloses his Executive Summary Page for each contract bundle which displays real time quotes for the best bid and offer for each contract in each outstanding series of the contract bundle [0466]. The Executive Summary Page also shows the expiration date for each outstanding series, the payout criterion for each contract, and the current rate, level, or value of the underlying. The Executive Summary Page allows the member to hyperlink to the rules describing the contract bundle and contracts, charts showing the trading history of all the contracts, and a glossary of terms related to the contract bundles, contracts, and the underlying. Examiner interprets *hyperlinking to the rules describing the contract bundle and contracts, etc.* as analogous to Applicant's **displaying linkage data.**

Therefore, it would have been obvious to a person having an ordinary skill in the art at the time of the instant invention to modify **Nadan's** disclosure to include *displaying derivative contract data along with linkage data* as taught by **Nafeh** because it would allow a user to determine a applicable derivative data need to make an informed decision when trading them.

25.   Regarding **claim 13**, **Nafeh,** teaches:

- enabling said first user to trade said first purchased derivative contract in an adjustment market after said expiration.

Nafeh discloses in his invention a computer-network based futures trading system, or platform, which is electronically accessible by prospective traders, for enabling transactions related to futures contracts and futures contract bundles [paragraph 0035]. Examiner interprets a prospective trader as Applicant's first user.

Therefore, it would have been obvious to a person having an ordinary skill in the art at the time of the instant invention to modify **Nadan's** disclosure to include *enabling a user to trade derivative contracts after an earlier option had expired* as taught by **Nafeh** because it allows a user to trade options efficiently.

26.   Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Nadan** in view of **Blalock** in further view of **Bjerre,** as applied to claim 16, in further view of **Official Notice**.

27.   Regarding **claim 19, Lancaster** teaches capacity releases being further bundled in accordance with a time frame criterion to create said plurality of available derivative contracts.

Examiner takes **Official Notice** that in the art of trading freight derivatives many derivatives such as puts and calls have a time limit on when they may be exercised.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the instant invention to modify **Nadan's** disclosure to include creating derivative contracts with a time frame criterion because in the art of trading freight derivatives, it is well known that shipping of goods is time and schedule dependent.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Baird whose telephone number is (571)270-3330. The examiner can normally be reached on Monday - Thursday 7:30 am - 5:00 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles R. Kyle can be reached on 571-272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ed Baird/
Examiner, Art Unit 3695

/Narayanswamy Subramanian/
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